

North Somerset Council Decision

Decision Of: Director of Adult Social Services

With Advice From: s.151 Officer & Head of Strategic Procurement

Directorate: Adult Social Services



Decision No: ASC042 (2021/22 Scheme)

Subject: Award of the Community Equipment Service Contract for BNSSG Clinical Commissioning Group, Bristol City Council, South Gloucestershire Council and North Somerset Council

Key Decision: Yes

Reason:

Above £500,000 and could affect more than two wards.

Background:

The current NSC contract with Medequip Assistive Technology Ltd was due to end on 30 September 2021 and was subsequently extended to 31 March 2022. The service assists children and adults to remain in their own homes, at school and in care homes through provision of essential equipment. The service provider manages, maintains and delivers equipment for the people of North Somerset. Equipment will range from a grab rail to support someone up the stairs, to a specialist chair to support our most disabled children in the district. Many of our care plans include the provision of equipment and it is an essential service for the council to deliver its statutory duties. We have procured the Community Equipment Service with Bristol, North Somerset and South Gloucestershire (BNSSG) Clinical Commissioning Group (CCG), South Gloucestershire Council and Bristol City Council to provide a consistent service across the area.

The commissioners issued a Prior Information Notice (PIN) in September 2020 to alert the market that the new process was starting and identify any additional potential providers. A supplier information day was held on 19 October 2020 with suppliers that attended the event expressing positive feedback on our process.

On 12 October 2020, the commissioners released the Tender on a procurement portal. The Invitation to Tender and all associated documentation was available electronically on the South West Commissioning Support Unit's electronic procurement portal (www.supplyingthesouthwest.org.uk). It was freely available to anyone who wished to register to view it.

The procurement was advertised in the Official Journal of the European Union 2020/S 202-492088 and Contracts Finder.

A total of three organisations expressed an interest via the procurement portal in attending a bidder information session. Three organisations attended a bidder information session on 19 October 2020.

Form of Tender

Appendix 1 contains the Invitation to Tender with the full Tender evaluation questions and eligibility criteria. Table 3 summarises the sections that bidders were required to submit. The commissioners provided forms and templates for bidders to complete.

Table 3: Summary of content of Tender bidders were required to submit

Part/Section	Required information
Part 1, Section 1	Provider Information Bidding Model Contact Details
Part 2, Section 2	Grounds for mandatory exclusion
Part 2, Section 3	Grounds for discretionary exclusion
Part 3, Section 4	Economic and Financial Standing
Part 3, Section 5	Organisational relationships
Part 3, Section 6	Technical and Professional Ability
Part 3, Section 7	Modern Slavery
Part 3, Section 8	Additional Questions
Part 3, Section 9	Project specific questions to assess Technical and Professional Ability
Part 4	Pricing
Part 5	Anti-Collusion Certificate
Part 5	Certificate as to Canvassing
Part 5	Form of Tender Letter

Eligibility criteria

In order for bids to be eligible for evaluation of quality (technical and professional ability) and financial elements, bidders needed to pass eligibility criteria. These criteria covered the main elements of a standard selection questionnaire, including financial standing, governance and mandatory and discretionary grounds for exclusion.

Table 4 lists these 'eligibility' sections that were marked as Pass or Fail.

As set out by the commissioners in the Invitation to Tender, Pass/Fail sections for all Tenders were evaluated first before Part 3, Section 9 (Technical and Professional) and Part 4 (Price). Any Tender that failed the Pass/Fail sections would not have their Technical and Professional section assessed.

Table 4: Pass/Fail sections that Tenders needed to Pass before other sections were evaluated

Section	Outline	Level
Part 2, Section 2	Grounds for Mandatory Exclusions	The commissioners may exclude any Tender that answers 'Yes'.
Part 2, Section 3	Grounds for Discretionary Exclusion	The commissioners may exclude any Tender that answers 'Yes'.
Part 3, Section 4	Economic & Financial Standing (self-certification)	Full details must be submitted. The commissioners reserve the right to fail the Tender. Financial standing will be judged by the commissioners Finance Officers through an assessment of the company's profitability, liquidity gearing and turnover and must be judged as acceptable to undertake the contract. If annual turnover is less than 50% of the annualised contract value then for this contract the application would not pass the financial assessments. This is a Pass/Fail requirement.
Part 3, Section 6	Technical and Professional Ability	The responses will be judged on their relevance to this Contract opportunity. This is a Pass/Fail requirement.
Part 3, Section 7	Modern Slavery Act	The commissioner may exclude any Tender that answers 'No' to 7.2.
Part 3, Section 8	Insurance (self-certification)	Minimum: Employer's (Compulsory) Liability Insurance = £10,000,000 Public Liability Insurance = £5,000,000 Product Liability Insurance = £5,000,000 This is a Pass/Fail requirement.
Part 3, Section 9	Project specific questions to assess Technical and Professional Ability	Questions A3 and A4 were pass/fail questions.

Note: Further details about evaluation are contained in Appendix 1.

Evaluation criteria

The Invitation to Tender set out that the commissioners would evaluate Tenders on the basis of what is the most economically advantageous, taking into account both quality and price.

60% of the scored component was allocated to quality questions (Part 3, Section 9 questions to assess Technical and Professional Ability). The Invitation to Tender set out a list of questions for bidders to respond to in this section (see Appendix 1).

Table 5 sets out the relative weight attributed to Part 3, Section 9 questions to assess Technical and Professional Ability.

Table 5: Weighting allocated to Part 3, Section 9 questions

Section 9 questions	Topic	Weighting %
A3	Up to date policies	Pass/Fail
A4	Is organisation CECOPS Registered?	Pass/Fail
A5	Service Delivery	20%
A6	Children's Equipment	5%
A7	Customer Service	5%
A8	Value and innovation	5%
A9	IT and technology	10%
A10	Mobilisation and Implementation	10%
A11	Social Value	5%
	Total weighting	60%

Note: Further details about evaluation are contained in Appendix 1.

Each of the Section 9 weighted questions was graded using the criteria in Table 6. The Invitation to Tender set out that the commissioners reserved the right to disqualify Tenders that scored below 3 on any question (excluding the social value method statement). No Tender scored below 3.

Table 6: Criteria used when grading responses to Part 3, Section 9 questions

Grade	Descriptor	Criteria
5	Excellent	A response that inspires confidence; specification is fully met and is robustly and clearly demonstrated and evidenced. Full evidence as to how the contract will be fulfilled either by demonstrating past experience or through a clear process of implementation.
4	Good	A response supported by good evidence/examples of the Bidders' relevant ability and/or gives the council a good level of confidence in the Bidders' ability. All requirements are met and evidence is provided to support the answers demonstrating sufficiency, compliance and either actual experience or a process of implementation.
3	Satisfactory	A response that is acceptable and meets the minimum requirement but remains limited and could have been expanded upon.
2	Weak	A response only partially satisfying the requirement with deficiencies apparent. Not supported by sufficient breadth or sufficient quality of evidence/examples and provides the council a limited level of confidence in the Bidders' ability to deliver the specification.
1	Inadequate	A response that has material omissions not supported by sufficient breadth and sufficient quality of evidence/examples. Overall the response provides the council with a very low level of confidence in the Bidders' ability to deliver the specification.
0	Unsatisfactory	No response or response does not provide any relevant information and does not answer the question.

Note: "Requirements" are those identified in Invitation to Tender documents, including the Contract and Specification.

40% of the scored component was allocated to price (Part 4), where bidders were asked to submit responses using a template. The Price assessment included three areas cost of equipment, activity costs and specialist equipment. Tenders were

required to provide unit prices for each of these elements. The total annual cost was then calculated using an estimated usage matrix provided with the Invitation to Tender documents. The commissioners reserved the right to challenge how a bidder could deliver an abnormally low-priced Tender. No abnormally low price was submitted.

As outlined in the Invitation to Tender, the Tender with the lowest total price was allocated the maximum score of 40%. Other Tenders were expressed as a percentage of the maximum score using the formula: (Lowest annual contract cost / bidder's annual contract cost) x weighting

The Invitation to Tender documents in Appendix 1 contained a worked example.

The commissioners followed the process set out in the Invitation to Tender, whereby the weighted Price score was combined with a weighted quality score to give the total weighted score for each Tender. Tenders were ranked in descending order by their total weighted score. The Tender with the highest overall score that also passed the Pass/Fail criteria was the high scoring bidder, which the commissioners intend to award the contract to.

Evaluation and moderation process

Prior involvement by bidders in the procurement process

The commissioners put the following processes in place to make sure that there was no impact on competition from potential prior involvement by any bidder:

- no potential bidder was involved in drafting or reviewing the specification for Services or other parts of the procurement development process
- evaluation criteria were set out in the Invitation to Tender that would be applied equally to all
- the commissioners met with potential bidders to discuss the procurement only at one pre-arranged time, where any interested party was welcome and responses to all clarification questions were released to all bidders
- the evaluation criteria did not favour past experience in the BNSSG area
- a moderator with no knowledge of the bidders and their prior involvement or experience supported the final moderation of evaluation grades

Tenders received

Three Tenders were submitted by the deadline of 16 November 2020 at 1pm.

The procurement team assessed their eligibility in line with the published criteria. All three Tenders were eligible. The bidders were, in alphabetical order:

- Medequip Assistive Technology Ltd
- Nottingham Rehab Ltd (trading as NRS Healthcare)
- Millbrook Healthcare Ltd

Initial evaluation

An evaluation panel made of up eight people each independently evaluated the Part 3, Section 9 scored questions in line with the published guidance. The evaluation panel then met with a moderator and agreed a consensus score.

Separate to this, the procurement team scored the Part 4 price question, in line with the published guidance.

The high scoring bidder was identified using the planned process. The commissioners agreed to award a contract, and this was communicated to bidders on 22 February 2021.

Re-evaluation – change to specified process

A bidder challenged the outcome of the initial evaluation and issued a claim comprising of three main strands:

- alleged unlawful evaluation process
- alleged unlawful scoring
- alleged unlawful reasons/failure to maintain adequate contemporaneous records of reasons before the commissioners proceeded to award the contract.

Following legal review (privilege in which is not waived), the commissioners identified that a small minority of the allegations made in the claim did expose commissioners to a risk of a successful challenge. In order to avoid this risk and a lengthy and costly litigation process, the ICES Programme Board made the decision to cancel the decision to award the contract to the high scoring bidder following initial evaluation and conduct a fresh re-evaluation of the submissions with a fresh panel of evaluators.

This was a change in the specified process. It came about because of the reasons captured fully in the commissioner's contemporaneous decision-making documents but which can be summarised as: (i) the commissioners' wish to avoid defending a process which was at risk of successful legal challenge; and (ii) the commissioners' wish to convene a fresh panel of evaluators who would benefit from updated training regarding record keeping and to rectify any arguable deficiencies in the audit trail to date.

In July 2021 the commissioners contacted the three bidders to see whether their bid submission remained valid, including the price. One bidder withdrew from the process, stating that they were not able to maintain the Price submitted at this time. Two bidders confirmed that they were willing to have the Part 3, Section 9 scored questions re-evaluated and that their price submitted remained valid. These two bidders were, in alphabetical order:

- Medequip Assistive Technology Ltd
- Nottingham Rehab Ltd (trading as NRS Healthcare)

In August 2021, the commissioners asked the two remaining bidders to remove some content from their responses to Part 3, Section 9 scored questions so that every response to every question was within the **specified word limit**. This was to make sure that Tenders were being compared on a like for like basis. The word limits were specified in the Invitation to Tender document.

There was no change to the scored question wording, word limits or criteria used.

The equipment schedules submitted by the bidders as part of the Price element (Part 4) were spot checked by Jackie Ayres, Commissioning Support Manager of NHS Bath & North East Somerset, Swindon and Wiltshire CCG. Following Ms Ayres' spot check both bidders remaining in the process were asked in October 2021 to review the equipment schedules they had submitted in order to determine whether all products offered met the commissioners' published specification requirements. Bidders were permitted to swap out non-compliant items for compliant alternatives and to provide an updated cost of equipment to reflect any swaps. Medequip Assistive Technology Limited identified that one product that had been submitted was not compliant and replaced it with a compliant alternative. Nottingham Rehab Services Limited trading as NRS identified that all of their products were compliant and did not make any substitutions. As a result of the equipment compliance process the price of the Medequip Assistive Technology Limited submission increased marginally from that originally submitted. Otherwise, no changes were permitted to the price submissions.

Both remaining bidders were asked to confirm the validity period of their tenders would be extended in August and October 2021. The tender validity periods expire on 7 January 2022.

A new evaluation panel was chosen so that the evaluation process could start 'fresh'. The new evaluation panel consisted of five evaluators for the majority of questions and four evaluators for others, depending on the expertise needed on the panel. The panel included representatives from the commissioning bodies, some of whom had frontline experience relevant to the Service and others of whom had commissioning and contract management expertise. The evaluation panel was confirmed by the Programme Board on 8 July 2021.

Each member of the evaluation panel completed a form declaring interests and confirming they would maintain confidentiality prior to receiving copies of the Tenders. All evaluators received training in how to evaluate the bids and the grading scale to be used. It was mandatory for evaluators to take part in training.

In October 2021, the evaluation panel members each independently read and graded each Tender response to each question. They did not compare Tenders. In scoring a

specific question, they did not consider information from any other question. They did not have access to Price information. They did not take any information from previous scoring into account. Each evaluator was asked to provide their initial thoughts about a grade and to jot notes about their reasons.

Moderation to achieve consensus score

The feedback from each evaluator was compiled about each question. The compiled information was sent to evaluators to review, so they could see what others thought and think about how the panel could reach a consensus grade. This was considered on a question-by-question basis.

In November 2021, the evaluation panel members met with an independent moderator. The moderator was based outside the area, did not know either bidder, did not know the outcome of the previous evaluation process and had no vested interest in the outcome. The moderator did not know the outcome of the eligibility or price assessments.

There was a separate moderation meeting for each of the scored quality questions. At moderation meetings, the evaluation panel reviewed the grades awarded by each evaluator and their reasons and agreed a moderated score for each question for each Tender. 'Averaging' of initial grades was not used. The panel considered the criteria for awarding grades (Table 6) and talked about the extent that a Tender achieved the criteria for a specific question. The Tenders were taken in a different order at each moderation meeting and the evaluators spoke in a different order. The bids were not compared. The evaluation panel reached consensus about a grade for all questions and all Tenders.

There was a process agreed in advance in the event that the panel could not reach consensus. In this case, the moderator would suggest a potential grade to the panel during the meeting, based on weighing up the written and verbal comments of all evaluators. If the panel could not agree to form a consensus around this grade, then the process followed would be referred to a Director at one of the commissioning organisations for quality assurance and arbitration. The assigned Director was not involved in evaluation or moderation. This process was not needed, as the panel reached a consensus in all cases.

The moderator took notes at the moderation meetings simultaneously with a note taker from outside the commissioning organisations. These notes were combined to form a record of the moderation discussions. The notes were completed the same day as the moderation meetings. The notes were circulated to the evaluation panel who had four working days to review them for accuracy. The notes were checked by the moderator and the note taker to make sure they described the process appropriately and by the commissioners' legal advisers to make sure that they contained adequate detail.

The notes did not aim to capture the discussion verbatim. They aimed to summarise the consensus score agreed, the evaluators' reasoning and the reason why any evaluator altered their initial suggested grade after group discussions. The notes of the moderation are included as Appendix 2.

Review of evaluation process and outcome

After all moderated consensus grades were finalised, the grades for each Tender were calculated by the procurement team in line with the advertised process and checked by the independent moderator. The weighted score was combined with the weighted Price score to identify the high scoring bidder. These documents are to be reviewed by the ICES Programme Board and then on through each commissioning authority governance processes.

Evaluation outcome

The overall scores for the Tenders were as follows, in order of the highest score:

- Medequip 90.0%
- NRS 86.2%

Medequip was the high scoring bidder, based on the evaluation criteria set out in the Invitation to Tender.

Table 7 shows the moderated consensus scores for each scored quality question and the Price assessment. Questions marked in pink show where Medequip scored more highly. Questions marked in blue show where NRS scored more highly.

Table 7: Consensus scores for scored evaluation questions

Question	Weighting %	Medequip grade (0 to 5)	Medequip weighted score	NRS grade (0 to 5)	NRS weighted score
A5 Service Delivery	20%	4	16%	4	16%
A6 Children's Equipment	5%	4	4%	5	5%
A7 Customer Service	5%	4	4%	3	3%
A8 Value and Innovation	5%	4	4%	4	4%
A9 IT and Technology	10%	5	10%	5	10%
A10 Mobilisation and Implementation	10%	4	8%	4	8%
A11 Social Value	5%	4	4%	3	3%
Price	40%	-	40%	-	37.2%
Total weighted score	100%	-	90.0%	-	86.2%

The evaluation panel scored both Tenders highly on most quality questions. All Tenders received a score of at least 3 (satisfactory) on every question.

When evaluators individually graded the questions, bids were not compared. When deciding on a group consensus grade at moderation meetings, the bids were not compared. Scores were decided independently of the other bid.

Decision:

To award the contract for Community Equipment Services to Mediquip Assistive Technology Limited (Registered Company No: 04198824).

It will be a five-year contract with an optional extension of up to two-years. The estimated contract value across the four partners is £42m over the seven years. The North Somerset estimated value is £4.627m.

Reasons:

To award the Community Equipment Service contract following the need to re-evaluate the original procurement submissions.

Options Considered:

Not Applicable

Financial Implications:**Costs/Funding:**

The Pricing Schedule used to evaluate bids generated an estimated annual cost based on historic usage figures. It is important to recognise that this figure should not be used to predict future expenditure, because it excludes expenditure for which there is no agreed contractual price (mainly Specials) and because future demand is difficult to predict.

Nevertheless, an exercise was undertaken before bids were received to populate the pricing schedule using current contract prices as far as possible. This was a complex and inexact exercise because of the differences in current equipment across the different partner contracts. However, it indicated that the annual cost for the estimated usage in the pricing schedule, using current prices, would be between £4.4m and £4.8m.

Like-for-Like activity only, the unit costs for the new contract are marginally lower than the contract. This does not necessarily mean that real savings will be generated, because of system pressures and the impact of collection credits from legacy stock and the potential spend on specialist equipment; it does, however, demonstrate that value for money has been achieved and that the contract prices are affordable. Close monitoring of actual spend will take place once the new contract starts, to demonstrate this.

Spending is currently funded through the Better Care Fund under a Section 75 agreement, although as this is a demand-led contract, each authority is responsible for its own over or under-spends. Various council budgets contribute to the funding, including adult social care, children's services and DSG revenue budgets, together with a capital budget for higher value items – the total amounts to more than £600,000 per annum.

Legal Powers and Implications:

The legislation that governs the prescription of equipment for the CCG and North Somerset Council is different. The table below outlines the legislation that must be considered by each agency when prescribing equipment.

North Somerset Council	Clinical Commissioning Group
<ul style="list-style-type: none">• The Care Act 2014• Children Act 1989• Chronically Sick and Disabled Persons Act 1970• Children and Families Act 2014	National Health Service Act 2006
<ul style="list-style-type: none">• Health and Safety at Work Act 1974 and Regulations• Manual Handling Operations Regulations 1992• Lifting Operations and Lifting Equipment Regulations 1998• Provision and Use of Work Equipment Regulations 1998	

London ADASS has produced a report on the [legal framework of equipment provision](#).

Legal support to the project was provided by the Bristol City Council Legal Team, who developed the contract.

Climate Change and Environmental Implications:

The proposals support North Somerset Council's Corporate Plan of an "open, fairer, greener North Somerset".

We addressed the climate change emergency with suppliers as part of the social value question (e.g. sustainable transport, use of electronic systems, waste reduction / responsible recycling etc.)

Consultation:

Market Engagement actions

There are three major suppliers of community equipment. Pre-tender discussions were held with each of these suppliers in May 2019 in order to explore current market views. All three suppliers provided useful insights and views which influenced the Procurement Plan and indicated that they were very keen to bid for a joint contract.

The initial procurement process was aborted in April 2020 due to the impact of Covid on project and mobilisation resources. A PIN notice was issued in September 2020 in order to alert the market that the new process was starting and identify any additional potential providers.

A supplier information day was held on 19 October 2020 with suppliers that attended the event expressing positive feedback on our process.

Risk Management:

The main risks identified are:

Increase in population:

The population of North Somerset is growing and in 2015 was estimated to be 209,944 people. This is predicted to grow over the next two decades, reaching 256,120 by 2039.

No service provision:

As community equipment service is an essential service, if a new contract is not in place by the end of March 2022.

Equality Implications:

Have you undertaken an Equality Impact Assessment? Yes

A Stage 1 Equalities Impact Assessment was completed. The aim is to procure the same level of service to meet health and social care statutory duties to provide equipment for the residents of North Somerset.

There will be a low positive impact for people with disabilities as having a contract that is consistent across North Somerset, Bristol and South Gloucestershire will make cross-county transfers and prescription of equipment easier.

Corporate Implications:

Not Applicable

Appendices:

None

Background Papers:

London ADASS has produced a report on the [legal framework of equipment provision](#).
Stage one: Equalities Impact Assessment
Commissioning Plan
Procurement Plan

Signatories:

Decision Maker(s):

Signed:



Title: Director, Adult Social Services

Date: 20 December 2021

With Advice From:

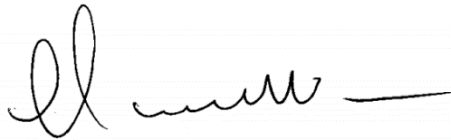
Signed:



Title: s.151 Officer

Date: 20 December 2021

Signed:



Title: Head of Strategic Procurement

Date: 20 December 2021

Footnote: Details of changes made and agreed by the decision taker since publication of the proposed (pre-signed) decision notice, if applicable: